87-1812

No.

Supreme Court, U.S.
FILED
APR 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

IN THE MATTER OF THE PROPOSED INCORPORATION OF THE VILLAGE OF LIBERTY LAKES, LAKE COUNTY, ILLINOIS.

PETITIONERS SEEKING TO INCORPORATE LIBERTY LAKES,

Petitioners-Appellants,

vs.

VILLAGE OF LINDENHURST, a municipal corporation; **VILLAGE OF LAKE VILLA,** a municipal corporation; and **COUNTY OF LAKE,** a body politic and corporate,

Intervenors-Appellees.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

NEWTON E. FINN
2111 Washington Street
Waukegan, Illinois 60085
(312) 336-9444

Attorney for Appellants

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTION PRESENTED

Whether an amendment to the Illinois statutes for incorporating a village permits county boards to act in violation of the Due Process Clause of the Fourteenth Amendment?

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Intervenors-Appellees.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of Illinois, from which this appeal is taken, is found at 119 Ill. 2d 179; 518 N.E. 2d 132; and 115 Ill. Dec. 607.

GROUND OF JURISDICTION

On December 21, 1987, the Illinois Supreme Court rendered a decision in a village incorporation proceeding. That decision upheld a state statute attacked, *inter alia*, as violating federal due process rights. A petition for rehearing was denied on February 2, 1988. Appeal to this Court lies as a matter of right under Title 28, United States Code, Section 1257, subparagraph 2.

STATUTE INVOLVED

Ill. Rev. Stat. (1985)
Chapter 24, section 2-3-18

In any county of between 150,000 and 1,000,000 population which has adopted an official plan under "An Act to provide for regional planning and for the creation, organization and powers of regional planning commissions", approved June 25, 1929, as amended, the county board, by resolution, may provide that before the question of incorporating a village under this Division is submitted to the electors in response to a petition filed under Section 2-3-5 or 2-3-10 the county board must first determine that (1) the proposed incorporation is compatible with the official plan for the development of the county, and (2) the lands described in the petition as intended to be embraced in the village constitute a sufficient tax base as will insure the ability of the village to provide all necessary municipal services to its inhabitants. When such a resolution is in effect, the court in which such a petition is filed shall first require a showing that those determinations have been made by the county board. If no such showing is made, the court shall deny the petition. If such a showing is made, the court shall proceed as provided in Section 2-3-6 or 2-3-11, as the case may be.

MATERIAL FACTS

On October 29, 1986, the Petitioners seeking to incorporate Liberty Lakes filed their petition to incorporate the village with the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois (copy of petition in Appendix). Simultaneously, they requested the Lake County Board to make the determinations concerning the proposed village under Section 2-3-18 of Chapter 24 of the Illinois Revised Statutes. Lake County had adopted an official development plan and had passed a resolution putting this statute into effect.

While the matter was pending before the Lake County Board's Planning and Zoning Committee and before any decision had been reached, the Petitioners withdrew their request for county board determinations and filed their Motion To Strike Objections and To Set Hearing (copy in Appendix). That motion sought a ruling, *inter alia*, that Section 2-3-18 was violative of the Petitioners' federal due process rights. The court was asked to set a hearing on the merits of the incorporation proposal despite the lack of favorable determinations by the county board.

On January 12, 1987, the court heard argument on the merits of this motion. Also participating in that hearing were three intervening parties: the County of Lake and the Villages of Lindenhurst and Lake Villa. The court denied the Petitioners' motion and dismissed their petition for failure to show that favorable county board determinations had been made. From that Order, the Petitioners appealed to the Illinois Appellate Court. The Supreme Court of Illinois removed the case from the Appellate Court and allowed a direct appeal for reasons of public interest.

SUBSTANTIAL QUESTIONS

The challenged statute, Section 2-3-18 of Chapter 24 of the Illinois Revised Statutes, is an amendment to the provisions for incorporating a village. Those provisions, found in Sections 2-3-5 *et seq.* of Chapter 24, create a cause of action that enables two hundred and fifty petitioners to obtain a hearing by the circuit court on an incorporation. The court is to hear evidence and to decide whether a proposed village meets certain statutory requirements concerning the size and contiguity of territory, the number of inhabitants, etc. Positive findings by the court lead to a referendum on the incorporation question.

The challenged amendment to this statutory scheme permits a county board to make two preliminary determinations. The first is whether the proposed incorporation is compatible with the official development plan for the county. The second is whether there is a sufficient tax base to insure the ability of the village to provide all necessary municipal services. If favorable county board determinations are not made on these two issues, the court is compelled by the statute to deny the petition summarily.

Section 2-3-18 makes no provision for any notice or hearing. No rights are given the petitioners to address a county board and present evidence or argument on the compatibility and tax base issues. No rules, regulations, or time limits are prescribed for county board proceedings, and county board action is not even mandated. There is no right to have county board decisions reviewed or appealed. While the statute purports to confer the limited power to make objective determinations, its practical effect is to permit a county board, by action or inaction, to cause

the dismissal of any incorporation proceeding without a hearing on the merits.

In *Gomillion v. Lightfoot*, 81 S. Ct. 125 (1960), this Court held that the power of states over political subdivisions is not absolute. "Legislative control of municipalities," this Court said, "no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause, and this includes a cause of action created by state statute. *Logan v. Zimmerman Brush Co.*, 102 S. Ct. 1148 (1982). That an action is *in rem* or similar to a class action with a large number of individual interests, does not remove it from the protection of due process. *Mullane v. Central Hanover Bank & Trust Co.*, 70 S. Ct. 652 (1950); *Greene v. Lindsay*, 102 S. Ct. 1874 (1982). State statutes that provide for the making of specific determinations may create "objective expectations" that themselve become protectible interests. *Vitek v. Jones*, 100 S. Ct. 1254 (1980).

Clearly, the challenged amendment permits county boards to deprive the petitioners of their cause of action for incorporation. Due process of law is lacking, because Section 2-3-18 provides no procedural protection. Without requiring any notice or hearing, without even requiring that determinations be made, the amendment subjects an incorporation proceeding to the whim of a county board. That board can make the most arbitrary decisions, or refuse to make any at all, and thereby force the dismissal of an incorporation proceeding without judicial scrutiny. The court is powerless to regulate or to review county board action. The expectations created by the statute, that objective determinations will be made on the compatibility and tax base issues, are easily frustrated.

The Illinois Supreme Court sidestepped the due process issue by holding that legislative power rather than adjudicative power is involved. Acknowledging that the statute contains no procedural protections and that judicial review is not contemplated, the Court concluded that the statute is valid *in light of* its due process deficiencies.

> Rather than attributing to the legislature the intent to vest the county board with quasi-judicial authority of doubtful constitutionality, we believe the absence of provisions which normally attend the judicial function indicates that the county board is intended to act in a legislative, not a judicial, capacity. The very defects claimed by the incorporators thus help persuade us that the delegation was proper. *Liberty Lakes Opinion*, App. p. 5.

Instead of focusing on the substance of the power, the making of specific determinations affecting a pending cause of action, the Illinois Supreme Court focused on the presence or absence of procedural provisions. Finding none, the Court then characterized the power as legislative in an attempt to salvage its constitutionality. Deciding whether a particular tax base was adequate for particular purposes became a "legislative" act, even though a line of Illinois cases had characterized similar deliberations by public bodies as quasi-judicial. *Wright v. City of Chicago*, 48 Ill. 285 (1868); *Eddy v. The People*, 218 Ill. 611 (1905); *Bowden v. Flannery*, 18 Ill. App. 2d 299 (2d Dist., 1958); *Board of Education, Etc. v. County Board, Etc.*, 13 Ill. App. 2d 561 (3d Dist., 1957).

The Illinois Supreme Court thus diverged from the Ohio Supreme Court, which had ruled that a town board acted quasi-judicially, not legislatively, in determining whether a petition to incorporate a village met certain legal requirements. *Jacobs v. Maddux*, 218 N.E. 2d 460 (S. Ct. Ohio, 1966). Indeed, even those states that define legisla-

tive power broadly enough to include determinations in incorporation proceedings, subject those determinations to procedural and judicial safeguards to prevent arbitrary action. *Westring v. James*, 238 N.W. 2d 695 (S. Ct. Wis., 1976); *Matter of Piper City*, 551 P. 2d 909 (S. Ct. Kan., 1976). Illinois appears to have isolated itself on this issue.

Petitioners respectfully urge this Court to give plenary consideration to this appeal. The Illinois Supreme Court has set a dangerous precedent that will sanction virtually any delegation of power. It must be the substance of the power itself that determines whether due process provisions are necessary. If the presence or absence of such provisions is used to characterize the power and resolve the due process issue, then constitutional analysis is reduced to Catch 22. The applicability of basic constitutional guarantees should not depend upon attenuated definitions of and distinctions between adjudicative and legislative power.

At the heart of this appeal is the substantial interest of citizens in establishing their own form of government, their statutory right to pursue a cause of action to obtain a hearing—and then a vote—on a question of self-determination. That important right should not be thwarted by an amendment that appears to authorize the making of objective determinations but actually permits the exercise of arbitrary power.

Respectfully submitted,

NEWTON E. FINN
2111 Washington Street
Waukegan, Illinois 60085
(312) 336-9444

Attorney for Appellants

APPENDIX

SUPREME COURT OF ILLINOIS

[Filed December 21, 1987]

Docket No. 64772—Agenda 52—May 1987.

In re PROPOSED INCORPORATION OF LIBERTY LAKES (Petitioners Seeking to Incorporate Liberty Lakes, Appellants, v. The Village of Lindenhurst *et al.*, Appellees).

JUSTICE SIMON delivered the opinion of the court:

The question to be answered here is whether a statute requiring two defined determinations by the county board of certain counties as a precondition to the incorporation of villages represents an unlawful delegation of judicial power. The answer is no.

Petitioners seeking to incorporate the village of Liberty Lakes (incorporators) filed a petition in the circuit court of Lake County to incorporate under section 2-3-5a of the Municipal Code (Ill. Rev. Stat. 1985, ch. 24, par. 2-3-5a). Incorporators also requested the Lake County board to make certain determinations required by section 2-3-18 of the Code (Ill. Rev. Stat. 1985, ch. 24, par. 2-3-18) concerning the proposed village. While the matter was pending before the county board's planning and zoning committee, the incorporators withdrew their request for the board's determinations. The incorporators then sought a ruling in the circuit court that section 2-3-18 was unconstitutional. The villages of Lindenhurst and Lake Villa and the County of Lake had intervened and opposed the motion. The circuit judge upheld the statute and dismissed the petition to incorporate. We allowed incorporators' appeal to be brought directly to this court. 107 Ill. 2d R. 302(b).

Consideration of the validity of section 2-3-18 is somewhat obscured by two legislative drafting errors. First, the 1985 edition of the Illinois Revised Statutes actually

contains two sections denominated 2-3-18. Only the section added by Public Act 76-676 is at issue here. Second, by its terms, section 2-3-18 comes into play when a petition for incorporation is filed under section 2-3-5. This statutory reference was obviously intended to be to section 2-3-5a, the section under which this petition was filed, not section 2-3-5. Section 2-3-5 only applies to counties of less than 150,000 population, while sections 2-3-5a and 2-3-18 apply only to larger counties. The drafting error was apparently occasioned by the fact that different acts passed on the same day adopted section 2-3-18 and split former section 2-3-5 into two distinct sections (see Pub. Acts 76-676, 76-677, eff. Aug. 7, 1969). *In re Petition to Call an Election on the Question of Incorporating the Village of Forest Knoll* (1986), 148 Ill. App. 3d 436.

Section 2-3-18 provides:

> "In any county between 150,000 and 1,000,000 population which has adopted an official plan under An Act to provide for regional planning and for the creation, organization and powers of regional planning commissions', approved June 25, 1929, as amended, the county board, by resolution, may provide that before the question of incorporating a village under this Division is submitted to the electors in response to a petition filed under Section 2-3-5 or 2-3-10 the county board must first determine that (1) the proposed incorporation is compatible with the official plan for the development of the county, and (2) the lands described in the petition as intended to be embraced in the village constitute a sufficient tax base as will insure the ability of the village to provide all necessary municipal services to its inhabitants. When such a resolution is in effect, the court in which such a petition is filed shall first require a showing that those determinations have been made by the county board. If no such showing is made, the court shall deny the petition. If such a showing is made, the court shall proceed as provided in Section 2-3-6 or 2-3-11, as the case may be. (Ill. Rev. Stat. 1985, ch. 24, par. 2-3-18.)

Lake County is within the prescribed population limits, has adopted an official plan under "An Act to provide for regional planning * * *" (see Ill. Rev. Stat. 1985, ch. 34, pars. 3001, 3006), and has also passed a resolution requiring that a petition to incorporate a village must contain the two statutory determinations by the county board. The only question is whether section 2-3-18 is constitutional.

Incorporators' argument is that the power to make the statutory determinations that the proposed incorporation is compatible with the county's official development plan and that the proposed village will have a sufficient tax base to provide all necessary services is "quasi-judicial" in nature. They then contend that the absence of time constraints on the county board's actions, the vagueness of the statutory standards, the fact that no procedures for discovery or a hearing are included, and the lack of any provision for judicial review render the delegation of this quasi-judicial power unconstitutional, apparently under either the separation of powers clause (Ill. Const. 1970, art. II, sec. 1) or the due process clause (Ill. Const. 1970, art. I, sec. 2).

"Municipalities are mere creatures of the Legislature, created for convenience in the handling of day-to-day local problems. The Legislature has complete authority over them and may change * * * [,] expand, contract or even abolish them * * *." (*People ex rel. Landwer v. Village of North Barrington* (1968), 94 Ill. App. 2d 265, 272.) It is not contested that the General Assembly could have conditioned incorporation of a village on a purely legislative action of the county board consenting to the incorporation. (See *Town of Godfrey v. City of Alton* (1975), 33 Ill. App. 3d 978 (upholding provision of section 2-3-5a requiring consent of neighboring municipality).) The only dispute here is therefore one of statutory interpretation: Did the General Assembly mean for the county board to act in an adjudicative or legislative capacity?

The incorporators seize on the fact that the statute requires the county board to make two "determinations."

This, they submit, calls for the application of law to a set of particular facts, a classic adjudicative function. Incorporators' argument, though, ignores the context in which this authority has been delegated.

Section 2-3-18 applies only to counties which have adopted an official regional development plan. A county board may create a regional planning commission to prepare a development plan when "in the judgment of the county board" it is necessary for the "general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of [the] region" (Ill. Rev. Stat. 1985, ch. 34, par. 3001), and in certain counties, including Lake, the county board may adopt an "official plan" (Ill. Rev. Stat. 1985, ch. 34, par. 3006). Like zoning (*LaSalle National Bank v. County of Cook* (1957), 12 Ill. 2d 40, 46), regional planning is clearly a legislative function. The authority to determine a proposed village's compatibility with the official plan and to decide whether such a village will have a sufficient tax base to enable it to meet the needs of its citizens are simply adjuncts to this function without which the official plan could routinely be frustrated. Viewed in the context of its planning authority, the county board is not a neutral arbiter commissioned to apply legal principles to a particular set of facts, but rather the formulator of the policy in the first instance, charged with making a policy assessment as to the appropriateness of the proposed incorporation. The county board's policy determinations under section 2-3-18 are no more quasi-judicial than its "judgment" under the regional planning statute that a development plan is necessary.

That the county board's consideration is limited to two determinations does not alter our conclusion. These two factors are exceedingly broad in scope and permit the county board to assess the appropriateness of the proposed incorporation with respect to its most significant policy interests. Although the legislature has delegated less than full authority over incorporation to the county board, the authority does not thereby become quasi-judicial.

Our duty to construe statute to affirm their constitutionality (*Harris v. Manor Healthcare Corp.* (1986), 111 Ill. 2d 350, 363) supports the conclusion that section 2-3-18 contemplates only an exercise of legislative authority by the county board. As the incorporators correctly note, the statute contains no mechanism for conducting an adversary proceeding. The determinations required, that the incorporation is "compatible" with the official plan and that the proposed village will have a "sufficient" tax base, are perhaps too vague to serve as judicially manageable standards. Review under the Administrative Review Law (Ill. Rev. Stat. 1985, ch. 110, par. 3-101 *et seq.*), which is designed to furnish judicial review of administrative decisions but not legislative acts of legislative bodies (*Artz v. Commercial National Bank* (1970), 125 Ill. App. 2d 86), is not provided. (*Cf.* Ill. Rev. Stat. 1985, ch. 34, par. 606 (administrative review of county board decisions on claims against the county).) Rather than attributing to the legislature the intent to vest the county board with quasi-judicial authority of doubtful constitutionality, we believe the absence of provisions which normally attend the judicial function indicates that the county board is intended to act in a legislative, not a judicial, capacity. The very defects claimed by the incorporators thus help persuade us that the delegation was proper.

Incorporators' position also fails to account for the Municipal Code's division of responsibility between the circuit court and the county board in acting on a petition for incorporation. Before the question of incorporation can be presented to the voters, the circuit judge must hear testimony and find that the proposed village is a "village in fact" under the guidelines of section 2-3-5a. (Ill. Rev. Stat. 1985, ch. 24, pars. 2-3-6, 2-3-5a; *People ex rel. County of DuPage v. Lowe* (1967), 36 Ill. 2d 372.) If the legislature intended the determinations of compatibility with the official plan and sufficiency of the tax base to be adjudicated as well, there would have been no reason to place those questions in the hands of a decisionmaker other than the circuit judge. The fact that these issues are addressed

to the judgment of the county board, whose favorable determinations are a prerequisite to any proceeding before the circuit judge, strongly suggests that the county board was not meant to function as an adjudicative body.

We detect no constitutional infirmity in this delegation of authority to the county board. The judgment of the circuit court of Lake County is therefore affirmed.

Judgment affirmed.

JUSTICE CUNNINGHAM took no part in the consideration or decision of this case.

STATE OF ILLINOIS
COUNTY OF LAKE—ss

IN THE
CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

Gen. No. 86 MC 17 — Filed January 12, 1987

In the matter of the proposed incorporation
of the Village of Liberty Lakes, Lake County, IL

ORDER

On motion of Petitioners To Set Petition For Hearing, and to excuse compliance with 2-3-18 of Chpt 24, Ill. Rev. Stat., the court having heard arguments of counsel and being fully advised in the premises,

Said motion is denied.

Further, the Petition To Incorporate Village is hereby dismissed for failing to make a showing that the Lake County Board has made the appropriate findings under 2-3-18.

ENTER:

/s/ HARRY D. HARTEL
Judge

Dated at Waukegan, Illinois
this 12th day of January 1987.

(Letterhead Of)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

February 2, 1988

Mr. Newton E. Finn
Attorney at Law
2111 Washington Street
Waukegan, IL 60085-5093

No. 64772—In the Matter of the Proposed Incorporation of the Village of Liberty Lakes, etc. (The Village of Liberty Lakes, appellant, v. The Village of Lindenhurst, etc., et al., appellees). Appeal, Circuit Court (Lake).

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on February 16, 1988.

No. 64772

APPEAL TO THE SUPREME COURT
OF THE UNITED STATES
FROM THE SUPREME COURT OF ILLINOIS

IN THE MATTER OF THE PROPOSED INCORPORATION OF THE VILLAGE OF LIBERTY LAKES, LAKE COUNTY, ILLINOIS.

PETITIONERS SEEKING TO INCORPORATE LIBERTY LAKES,

Petitioners-Appellants,

vs.

VILLAGE OF LINDENHURST, a municipal corporation; VILLAGE OF LAKE VILLA, a municipal corporation; and COUNTY OF LAKE, a body politic and corporate,

Intervenors-Appellees.

From the Appellate Court of Illinois, Second District, Gen. No. 2-87-0030; there on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Gen. No. 86 MC 17; the Honorable Harry D. Hartel, Judge Presiding.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

PETITIONERS SEEKING TO INCORPORATE LIBERTY LAKES, by their attorney, Newton E. Finn, hereby appeal to the Supreme Court of the United States from the

Judgment of the Supreme Court of Illinois entered herein on December 21, 1987, and from the denial of their Petition For Rehearing on February 2, 1988. This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 2.

/s/ NEWTON E. FINN

[Dated April 26, 1988]

NEWTON E. FINN
Attorney
2111 Washington St.
Waukegan, IL 60085-5093
312/336-9444

No. 64772

APPEAL TO THE SUPREME COURT
OF THE UNITED STATES
FROM THE SUPREME COURT OF ILLINOIS

IN THE MATTER OF THE PROPOSED INCORPORATION OF THE VILLAGE OF LIBERTY LAKES, LAKE COUNTY, ILLINOIS.

PETITIONERS SEEKING TO INCORPORATE LIBERTY LAKES,

Petitioners-Appellants,

vs.

VILLAGE OF LINDENHURST, a municipal corporation; VILLAGE OF LAKE VILLA, a municipal corporation; and COUNTY OF LAKE, a body politic and corporate,

Intervenors-Appellees.

From the Appellate Court of Illinois, Second District, Gen. No. 2-87-0030; there on appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Gen. No. 86 MC 17; the Honorable Harry D. Hartel, Judge Presiding.

NOTICE OF FILING NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

To: State's Attorney Fred Foreman
18 N. County St.
Waukegan, IL 60085

Howard Teegen, Esq.
Soffietti, Johnson, Teegen & Phillips
74 E. Grand Av.
Fox Lake, IL 60020

Stephen Applehans, Esq.
Rosing, Applehans & Smith
1 N. County St.
Waukegan, IL 60085

Please be advised that on the 26th day of April, 1988, I filed the attached Notice of Appeal by mailing the same from Waukegan, Illinois, by U.S. post express mail next day service, to Juleann Hornyak, Clerk, Illinois Supreme Court, Supreme Court Bldg., Springfield, IL 62706, requesting that said Notice of Appeal be filed instanter. The same day, I filed a copy of said Notice with the Circuit Clerk of the Nineteenth Judicial Circuit, Lake County, Illinois.

/s/ NEWTON E. FINN
Attorney For Appellants

PROOF OF SERVICE

STATE OF ILLINOIS
COUNTY OF LAKE

Newton E. Finn, being sworn upon oath, states that on April 26, 1988, he mailed from Waukegan, Illinois, by U.S. post first class, three copies of this Notice, together with three copies of the Notice of Appeal, to each of the parties to whom this Notice is addressed, at the respective addresses as set forth above.

/s/ NEWTON E. FINN

Subscribed and sworn to
before me this 26th day
of April, 1988.

_____

Notary Public

CIRCUIT COURT, NINETEENTH CIRCUIT
LAKE COUNTY, ILLINOIS

Gen. No. 86 MC 17 — Filed October 29, 1986

IN THE MATTER OF THE PROPOSED
INCORPORATION OF THE VILLAGE OF
LIBERTY LAKES, LAKE COUNTY, ILLINOIS

PETITION TO INCORPORATE VILLAGE

The undersigned Petitioners, by their attorney, Newton E. Finn, petition the Court pursuant to Ill. Rev. Stat., Ch. 24, Sec. 2-3-5a and state as follows:

1. Petitioners seek to incorporate a village to be known as "Village of Liberty Lakes," lying entirely within Lake County, Illinois, a county of 150,000 or more population as determined by the last preceding federal census. The area to be included in the village is legally described and depicted in "Exhibit A" attached hereto and incorporated herein.

2. Said area-is contiguous territory of at least 4 square miles, no part of which lies within any existing city or village.

3. Petitioners are electors who reside in said area which has approximately 10,000 residents, more than 2,500 of which reside in permanent dwellings.

4. The Illinois Secretary of State has certified that "Village of Liberty Lakes" has not been adopted as a name by any other municipality. His certificate is attached hereto and incorporated herein as "Exhibit B."

5. The County Board of Lake County, Illinois has adopted an official plan and resolution as authorized by Ill. Rev. Stat., Ch. 24, Sec., 2-3-18, and Petitioners have

formally requested that the County Board make the determinations required by this statute.

Wherefore, Petitioners pray as follows:

A. For a ruling that the area proposed to be incorporated is a village in fact.

B. For a certification that the question of the incorporation of said area as the "Village of Liberty Lakes" be submitted to the electors residing therein.

C. For the submission of said question to said electors in the general election of April 7, 1987.

Respectfully submitted by
the following electors:

[Signatures omitted
in printing]

NEWTON E. FINN
Attorney
2111 Washington St.
Waukegan, IL 60085-5093
312/336-9444

[Exhibits omitted in printing]

CIRCUIT COURT, NINETEENTH CIRCUIT
LAKE COUNTY, ILLINOIS

Gen. No. 86 MC 17 — Filed December 19, 1986

IN THE MATTER OF THE PROPOSED
INCORPORATION OF THE VILLAGE OF
LIBERTY LAKES, LAKE COUNTY, ILLINOIS

MOTION TO STRIKE OBJECTIONS AND TO SET HEARING

Petitioners seeking to incorporate Liberty Lakes, by their attorney, Newton E. Finn, move the Court to strike all Objections and all other pleadings filed herein by parties other than Petitioners, and to set a hearing date on the Petition To Incorporate Village, and as grounds therefor state as follows:

1. This proceeding is ex parte, and no one besides the Petitioners and the Court may participate in it.

2. Although Petitioners have not obtained the findings of the Lake County Board under Ill. Rev. Stat., Ch. 24, Sec. 2-3-18, said findings are excused in this case for one or more of the following reasons:

a. Said statutory section, by its own express provisions, does not apply to a proceeding like the one at bar brought under Ch. 24, Sec. 2-3-5a.

b. The resolution passed by the Lake County Board on June 14, 1982, purporting to exercise the powers conferred by Sec. 2-3-18, does not apply to the Framework Plan adopted on July 13, 1982, and thus has no legal effect. Copies of both documents are attached and incorporated as Exhibits A and B.

c. The proceedings before the Lake County Board have become tainted by the action of a Board Member, and the denial of Petitioners' due process right to a fair and impartial hearing constitutes a waiver of the Board's quasi-judicial power. In this regard, an affidavit is attached and incorporated as Exhibit C and a portion of the transcript of the hearing of 12/15/86 before the Planning and Zoning Committee will be offered as a further exhibit when it has been prepared.

d. Sec. 2-3-18 is unconstitutional and void because it violates Art. II, Sec. 1 of the Illinois Constitution, and the due process clauses of both federal and state constitutions, in that it unlawfully delegates to the County Board judicial and/or legislative power, or mixes the two.

e. It is also unconstitutional and void under said provisions because it is indefinite, incomplete, arbitrary and vague, clothes the County Board with discretion to determine and define the law as well as apply the law, is subject to varying interpretations by various county boards, fails to require consistent and immediate administration, does not concern an area where direct or immediate judicial action is inexpedient or impractical, and makes no provision for judicial review. In this regard, a portion of the transcript of the hearing of 12/15/86 before the Planning and Zoning Committee will be offered as an exhibit when it has been prepared.

f. The Lake County Board has failed to adopt or publish procedural or substantive rules and regulations concerning 2-3- 18, so as to permit a petitioning party to be apprised of his rights and duties in the proceedings before the board, including the rights or procedures to admit evidence, the degree of his participation in the proceeding, whether cross-examination is permitted at any stage of the hearing process, whether the petitioner has direct access and input to the entire County Board as distinct from the Planning and Zoning Committee, whether there is a right to rehearing or review, etc.

Wherefore, Petitioners pray that the Court strike the aforesaid pleadings and set this matter for hearing on a date certain to determine whether Liberty Lakes is a village in fact according to Sec. 2-3-6 of the Municipal Code.

/s/ NEWTON E. FINN
Attorney For Petitioners

NEWTON E. FINN
Attorney
2111 Washington St.
Waukegan, IL 60085-5093
312/336-9444

[Exhibits omitted in printing]